

## **Nagin inherits Entergy lawsuit - Entergy suit - Times-Picayune, The (New Orleans, LA) - August 21, 2002 - page 01**

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Of all the unfinished business that Mayor Ray Nagin inherited from his predecessor, few issues are thornier than a City Hall lawsuit against Entergy New Orleans, the city's electric and gas monopoly and a subsidiary of New Orleans' only Fortune 500 company.

Filed by Mayor Marc Morial three months before he left office, the suit makes some eye-popping charges, including these:

-- That for the eight years before the suit, the **utility** giant substantially and systematically overbilled the city for street lighting services it was contracted to deliver.

-- That Entergy denied city officials access to company records -- a stance, the suit alleges, "clearly calculated to obstruct a legitimate investigation of its actions and the failure of performance of its obligations to the city."

The Morial administration and other proponents of the suit say the city is owed as much as \$41 million: about \$12 million in overpayments, \$14 million in penalties and \$15 million to pay the consulting company that audited the contract and that, Entergy officials charge, misled Morial into taking the matter to court.

"We were not going to be held hostage by individuals who attempted to use this issue as a means of solving either their financial problems or becoming rich," said Entergy executive Rod West, who said the numbers have no basis in reality.

The legal battle, which hinges on a streetlight-by-streetlight analysis of Entergy's actions, is complicated not just in its own right, but also because Morial's successor appears to have close ties to the company.

Nagin has drafted two top Entergy executives to serve in his administration. Entergy New Orleans Chairman Dan Packer is the new chairman of the Aviation Board. **Charles Rice**, a former senior counsel in another Entergy division, was named city attorney, a job that gives him authority over all litigation involving the city.

In a final twist, Nagin's ongoing City Hall corruption investigation led to the ouster of former Utilities Department Director Lilliam Regan, who was a catalyst in the decision to conduct the audit and file the lawsuit. Regan was fired on the crackdown's first day and later arrested -- only to have the charges, which had nothing to do with the suit or with Entergy, thrown out of court.

While stopping short of alleging that the arrest was an attempt by the Nagin administration to

discredit her, Regan's husband, defense lawyer Martin Regan, calls the confluence of people and events an "unusual coincidence" that should be closely examined.

## Off and on dispute

The lawsuit grew out of a dispute between the city and Entergy that had been raging off and on for more than a decade. At issue are Entergy's responsibility for repairing and maintaining the more than 50,000 light poles that line city streets, and the cost for providing the service. Charges under the agreement, which Entergy officials say is a break-even proposition, are billed directly to the city and are not passed on to **utility** customers. In 2001, the city's consultants say, Entergy charged the city \$9.6 million.

In the early 1990s, an audit showed that Entergy was charging for 600 lights that didn't exist and overbilling for hundreds of others. In 1994, the company reimbursed the city \$6 million.

While there was no formal agreement, Entergy continued to provide the service until August 1999, when the company and the city signed a contract. The deal, dubbed "Partners for a Brighter Future," was commemorated in a poster that still hangs at Entergy's downtown headquarters.

But in 2000, the relationship soured again after the Morial administration commissioned another audit that allegedly uncovered several irregularities, including overbillings for repairs and maintenance, and charges for services the city was not obligated to pay, such as maintenance of Entergy's power lines and equipment.

The audit was done by TriStem, a Texas consulting company that for the past two decades has audited power company billings for large corporations, hospitals, universities, hotels, and county and municipal governments.

TriStem's contract calls for the company to receive a percentage of the money the city recovers from Entergy, a percentage negotiated by Morial. TriStem, represented by lawyer Graymond Martin, a former top Morial aide, typically charges a higher percentage than Morial negotiated, the men said.

Entergy officials say that in January 2001, they offered to submit the dispute to an independent auditor approved by both parties, but the Morial administration refused.

A month later, Entergy credited \$2.4 million to the city's account. But the Morial administration said that with penalties, Entergy owed much more. Efforts to settle the matter went nowhere, and Morial reluctantly agreed to take the matter to court, filing suit in Civil District Court on Feb. 7.

## Negotiations failed

Morial said he met personally with Packer in an effort to reach a settlement.

"We spent hours and hours trying to resolve this without the necessity of litigation, and it was not successful," Morial said. "But I think the litigation was necessary to protect the interests of the city. It was a last resort."

Simply put, the Morial administration alleged that Entergy billed the city for work that was not authorized, work that was not done and work the city was not obligated to pay for, and then billed the city multiple times for the same jobs.

Morial said recently that Entergy's decision to issue a credit is evidence of irregularities. "I think the debate is not over whether there were problems," he said. "It's a debate over the magnitude and depth of the problems."

Regan put it more forcefully. In an October 2000 letter to Packer, she wrote that a "preliminary review" of the street-lighting issue "leaves the impression that Entergy is either callous and disrespectful of its ongoing relationship as a service provider to the city or purposefully engaged in conduct that is so grossly egregious as to rise to the level of fraud. Neither is acceptable to the city."

But West, a lawyer who oversees Entergy's regulatory affairs, said the demands being placed on the company, which he said started out at \$45 million, are "outrageous."

"We refused to pay that," West said. "No, check that, it wasn't simply that we refused to pay that, we refused to acknowledge it. We've credited a substantial amount of money that we believe fairly corrected, and fairly resolved, the contractual disputes, at least the lion's share of many contractual disputes that we thought were viable."

West also denied the Morial administration's charges that Entergy refused to give the city access to its records. He said Entergy was opposed to "allowing individuals to go on a fishing expedition with company records in an effort to try and drum up some sort of justification to match their number."

He said the city was "allowed to look at information that was relevant to the debate."

Conflicts of interest?

With Morial and Regan gone, all of this has landed in Nagin's lap, and observers are following the issue closely for signals as to how he'll treat Entergy in this and the city's many other dealings with the **utility**.

Nagin, a former top executive at Cox Communications, made it clear during his campaign and after his mayoral win that he intended to recruit talent from the corporate world to serve in his administration. But his choice of two top Entergy officials for key posts has raised questions about how City Hall can deal impartially with a **utility** whose franchise agreement makes it the city's sole provider of electricity.

"That is something that is a concern to me," said Gary Groesch, executive director of the Alliance for Affordable Energy, a consumer watchdog group. Monitoring **utility** franchises is a responsibility of the city's executive branch, particularly the Law Department, now led by an Entergy alumnus, Groesch said.

"The concern is that Mr. Rice, who may be a perfectly fine man, may have an unconscious bias for his former employer. In general, it is not good government to have franchisees running the franchise, so to speak," Groesch said.

Rice has said that he worked in labor relations while he was on the Entergy payroll and was unaware of the dispute, let alone the lawsuit. "I didn't even know about it until I told the general counsel I was thinking of taking the job" with the Nagin administration, he said.

But recognizing the potential for a conflict of interest, Nagin administration officials say they have erected a wall between Rice and the case, as well as all other Entergy-related matters, by assigning them to other members of the city attorney's staff. In this case, the outside law firm Smith & Fawer is reporting to Deputy City Attorneys Sherry Landry and Evelyn Pugh, who report directly to the mayor.

"I will not evaluate it," Rice said in reference to the suit. "I will not read the documents. If it has merit, they'll pursue it."

Nagin said Rice also was not consulted about the decision to arrest Regan on seven charges that she improperly waived taxicab inspection fees -- which she, and a judge, have since said she had the authority to do. Her arrest was based on a legal argument formulated by an attorney on Rice's staff.

### Settlement preferred

Administration officials have said that, while the suit Morial filed appears to contain some legitimate claims, they would rather reach a settlement with Entergy than prolong the litigation and incur additional legal costs. Landry and Pugh are expected to complete an evaluation soon, and the administration then will decide how best to proceed.

Nagin said he would have no problem pursuing this or any other claim against Entergy, regardless of his personal relationships with its top brass or any possible affinity he might feel for the company as the former boss of another regulated monopoly, the city's cable television franchise.

"This is all business to me, and I think that I'll handle it that way. I think I demonstrated that," Nagin said, referring to his decision not to interfere in the arrest of a cousin in the corruption crackdown. "If we have to do it with Cox, I'll do it. It's all part of my fiduciary responsibility, and I take that very seriously."

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